

## Section 5.3

### Stipulations

**How should the Hearing Officer introduce and address stipulations made during a prehearing conference?**

Following a prehearing conference, the Hearing Officer should open the hearing by informing the participants of the hearing rules and procedures, making introductions, and summarizing the substance and result of any prehearing conference.

To assure a complete Hearing Record, the Hearing Officer's prehearing conference summary should include:

- The names of the parties and the location, time, and date of the hearing;
- A statement that a prehearing meeting was held between the parties and that stipulations were made;
- A recitation for the record of each stipulation agreed to by the Respondent; for each stipulation, a reaffirmation by the Respondent that he/she understood and agreed to the stipulation.

**Definition**

**Stipulation** - A voluntary agreement between opposing parties concerning some relevant point. Matters that are the subject of a stipulation are no longer in dispute or contested and need not be addressed at the hearing.

**Can the Respondent withdraw a stipulation made during a prehearing conference?**

Yes. The Respondent may withdraw a stipulation made during a prehearing conference. If he/she requests to withdraw a stipulation, the Hearing Officer should attempt to ascertain why the Respondent is withdrawing a stipulation, although the Respondent has no obligation to provide a reason.

There are a few reasons why the Respondent may withdraw a stipulation:

- The Respondent did not understand the nature of the stipulation and wants to contest the facts set forth in the Notice of Proposed Action (NOPA) to which the Respondent has stipulated;
- The Respondent did not understand that the Hearing Officer's Findings or Conclusions *may* be based upon the stipulation without taking further evidence.

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## Stipulations, Continued

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### “What if?”

**Question:** If the Respondent withdraws the stipulation, can he/she do so at any time? Or would it be restricted to after the hearing record has been opened?

**Answer:** The Respondent can withdraw the stipulation at anytime, up to the conclusion of the hearing. They could even try to withdraw it after that, if they wanted to take the time and spend their resources to try to convince a court they didn't understand.

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### Advocate tip

The Advocate should adjust his/her presentation accordingly if a stipulation is withdrawn or rescinded.

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### Hearing Officer tip: Don't forget the hearing record!

Any discussions about stipulations after the hearing has begun should be reflected in the hearing record.

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### References

- Black's Law Dictionary, Second Edition
  - Hearing Officer Sourcebook, Second Edition, May 1995
  - Various “Type A” personalities contributed to the “What if?” discussions
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